JD-80-25
Madison, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

STARBUCKS CORPORATION

and Case 18-CA-295458
18-CA-297433

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 1473

Tabitha Boerschinger, Esq., and
Renée Medved, Esq.
for the General Counsel.
Michael Gotzler, Esq.,
Michael Yellin, Esq., and
Nina Neff, Esq.,
for the Respondent.
Mark Sweet, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Milwaukee, Wisconsin, on November 15 through 19, 2022, and October 16 and 17, 2023. United Food and Commercial Workers, Local 1473 (Union) filed the charge in Case 18-CA-295458 on May 9, 2022, and filed the charge in Case 18-CA-297433 on June 10, 2022. (GC Exh. 1(a).) The General Counsel filed an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) in this case on August 23, 2022. (GC Exh. 1(e).) The Complaint alleges that Starbucks Corporation (Respondent or Starbucks) violated the National Labor Relations Act (Act) by discharging four employees, subsequently listing one of the discharged employees as ineligible for rehire, and failing and refusing to rehire the discharged employee or offer other employment or a transfer in violation of Section 8(a)(3) and (1) of the National Labor Relations Act (Act). (GC Exh. 1(e).) The Complaint further alleges that Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union activities and the union activities of other employees. Starbucks Corporation timely filed its answer on September 2, 2022, denying the relevant allegations and asserting 19 affirmative defenses. (GC Exh. 1(g).) After considering the evidence and testimony presented, as well as the briefs of the parties, I find that Respondent violated the Act as alleged in the complaint.[1]

[1] The General Counsel's motion to amend and correct the transcript, joined by the Charging Party, is granted. The exhibits and transcripts shall be amended and corrected as set forth in the motion dated December 14, 2023.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,[2] and after carefully considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Starbucks Corporation, a Washington corporation with headquarters in Seattle, Washington, with stores located at 2515 University Avenue, Madison, Wisconsin, and 1 East Main Street, Madison, Wisconsin, has been engaged in the retail operation of coffee shops throughout the United States. In conducting its operations, during a 12-month period ending July 31, 2022, Respondent derived gross revenues in excess of $500,000, and purchased and received goods valued in excess of $5,000 directly from points outside the State of Wisconsin. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(g).) Furthermore, Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(g); Tr. 10.)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Business and Union Campaign

Respondent operates two stores in Madison, Wisconsin: one located at 3515 University Avenue (University Avenue Store) and 1 East Main Street (Capitol Square Store). Starbucks refers to its employees as partners. Around 35 partners work at the University Avenue location, the vast majority of whom are baristas. The University Avenue store has about 6-10 shift supervisors, and one store manager.

Steve Fox is Respondent's Senior Manager of Partner Relations. Lisa Greco serves as Respondent's District Manager. Chloe Kim is also a district manager. Sarah Jacob previously served as the Store Manager of the University Avenue store and reported to district manager Chloe Kim. Chris McQuillan is the Store Manager of the Capitol Square store. Respondent admits, and I find, that Fox, Greco, Kim, Jacob, and McQuillan are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. (GC Exh. 1(g).)

Brock Meirick is a full-time shift supervisor at a Starbucks store in Austin, Texas. He worked at the University Avenue store for about six years starting in October 2016. He was promoted to shift supervisor at the University Avenue store in 2018. As a shift supervisor he reported to

[2] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

Sarah Jacob. Both Meirick and Jacob spoke with employees about unions during the Union's organizing campaign.

In Respondent's stores baristas report to shift supervisors who in turn report to store managers. Respondent's store managers report to the district manager. Shift supervisors are considered part of the bargaining unit and shift supervisors perform barista duties. They also open the store, close the store, assign tasks to baristas, manage partners' breaks, reset and count cash drawers, and operate the store safe. The store manager makes the schedule for the partners in the store. Store managers also ensure the store runs smoothly, meeting sales goals, and sometimes works alongside employees in the store.

Baristas at the University Avenue store generally worked one of three shifts: opening, from before the store opened to mid-morning; "mids," from mid-morning to mid-afternoon; or closing, from mid-afternoon until after the store closed. There was a shift supervisor assigned to each shift. The University Avenue store opened between 5:00 a.m. and 6:00 a.m. and closed between 7:30 p.m. and 8:00 p.m. Baristas on the closing shift had special cleaning tasks, retrieved the tip jars, and locked the drive-through window. The shift supervisor assigned to the closing shift also closed out the cash drawers in the store.

Respondent maintained security cameras within the University Avenue store. These cameras faced the drive-through, the cash registers, the back room, and the hallway area near the counter. The footage was available to be viewed real time in the back room and Respondent also stored the footage.

The University Avenue store has an enclosed entranceway that opens into the main lobby. The main area of the store has a number of tables and a counter for ordering and picking up drinks. Behind the counter is a back room where employees clock in for their shifts and store their personal items. The back room also serves as a storage area for cleaning supplies and has a sink. The back room also houses computer monitors displaying security camera footage.

The back room also contains two bulletin boards: one where store management would post things and one where employees would post things. Items such as updates to the dress code, changes to store hours, and general updates are posted on the bulletin board used by management.

Employees of the University Avenue Store maintained an Instagram group chat called Starbeezy. (GC Exh. 14.) Schedules were posted on this group chat and employees used it to trade shifts, ask for shift coverage, and receive updates about the store. Employees of the University Avenue store also maintained another group chat called Capybara Appreciation Space, which was used for more casual conversations. (GC Exh. 11.) Employees used nicknames in the group chats. Yanissa Rivera was referred to as Yanisda. Cool Meg was Megan Jenson. Lover Bug was Anabelle Bonilla. Rivera and Jenson made posts supporting the Union in the Starbeezy group chat.

In March 2022, some of Respondent's employees began a union organizing campaign at the University Avenue store. During the campaign, union organizers would come into the store and

leave information. Meirick and Jacob were aware of the union organizing drive. Meirick and Jacob saw union information posted on the bulletin board in the back room.

B. Respondent's Policies and Work Rules

New employees were given a copy of Respondent's Partner Guide. Partners onboarded electronically and were expected to sign an acknowledgement of receipt for the Partner Guide. (R. Exhs. 1, 5, 9, 11, 15.) In signing the acknowledgement, partners verified that they read and understood the Partner Guide. However, several partners testified that they did not read or understand the Partner Guide. The Partner Guide contains disciplinary rules and a section on maintaining a safe work environment. (R. Exh. 2.[3]) Regarding discipline, the Partner Guide indicates

> Corrective action may take the form of a verbal warning, a written warning, demotion, suspension or separation from employment. The form of corrective action taken will depend on the seriousness of the situation and the surrounding circumstances. The evaluation of the seriousness of the infraction and the form of the corrective action taken will be within the sole discretion of Starbucks. There is no guarantee that a partner will receive a minimum number of warnings prior to separation from employment or that corrective action will occur in any set manner or order.
>
> In cases of serious misconduct, immediate separation from employment may be warranted. Examples of serious misconduct include, but are not limited to:
>
> • Violation of safety and/or security rules.
> • Theft or misuse of company property or assets.
> • Falsification or misrepresentation of any company document.
> • Violation of Starbucks drug and alcohol policy.
> • Possession of or use of firearms or other weapons on company property.
> • Harassment or abusive behavior toward partners, customers or vendors.
> • Violence or threatened violence.
> • Insubordination (refusal or repeated failure to follow directions).
> • Violation of any other company policy.

(R. Exh. 2.)

The section of the Partner Guide called "Safety and Security" states that off-duty partners must not be behind the counter or in the backroom/office and that customers are not allowed access to the store when it is closed for business. Non-partners are not allowed behind the counter or in the back room/office unless authorized by the store manager.

[3] This exhibit is an excerpt from the Partner Guide. Although the exhibit volume indicates that this exhibit, and R. Exh. 3, were not offered, both were offered and received into evidence. (Tr. 839, 871.) The exhibit volume should thus be corrected.

Respondent also maintains a Store Operations Manual. (R. Exh. 3.[4]) Store closing procedures are set forth in the Store Operations Manual, including that, "Only closing partners and identified vendors are allowed in the store after closing." It also indicates that the safe must not be opened during the last half hour of customer operations.

Starbucks had a Lyft benefit for some partners. Partners could get up to 20 free rides a month if scheduled to work before 6:00 a.m. or after 6:00 p.m. This benefit was only available at stores in areas with high crime rates. This benefit was available at the University Avenue store, Many partners used other partners for rides to and from work. Partners testified that they often waited for rides inside the store. Partners also testified that they were given permission by a shift supervisor to remain in the store after it closed. None of the partners who testified was aware of a rule or policy prohibiting off-duty employees from remaining in the store after closing time.

Partners testified that customers were allowed to remain in the store after closing if they were waiting for orders. Employees locked the door behind anyone waiting in line so that additional customers could not enter the store after closing. However, customers in line at closing time could remain in the store. As soon as the store closed, customers in the drive-through line would be informed that the store was closed. Employees made exceptions for people they knew and regular customers. These were not store policies but were instead considered unspoken rules.

C. Employment of the Alleged Discriminatees

Kendra Kindrai was employed at Respondent's University Avenue store as a barista from July 21, 2020, until May 6, 2022, when she was fired. Kindrai worked about 20-30 hours per week while employed by Respondent.

As a barista, Kindrai made drinks, assisted customers, and performed cleaning tasks. She received a single performance review by Sarah Jacob while working at the University Avenue store, sometime around March 15, 2022. District manager Chloe Kim also participated in the review, which lasted 30-40 minutes. Jacob and Kim discussed Kindrai's potential to be promoted at another store in the district. They also discussed Kindrai's concerns about the University Avenue store.

Kindrai raised concerns about another employee who allegedly violated partner conduct and safety rules on multiple occasions. This employee, Ingo Horn, engaged in racist, transphobic, and homophobic behavior, and unsafe work practices. Kindrai also said that Horn would get high in the store lobby and bathroom. She provided specific examples of Horn's unsafe practices, including using a rag meant to clean the counter and nozzles to wipe his dirty shoes. She also gave specific examples of Horn's discriminatory behavior, such as using offensive terms regarding Kindrai. Kindrai said that Horn had been given multiple chances while another employee had been fired for tardiness due to problems with public transportation. Kim testified that it was not fair to characterize this as a double standard while Jacob testified she was not aware of the extent of Horn's behavior.

[4] R. Exh. 3. is an excerpt from the Store Operations Manual.

Jacob went on to have several discussions with Horn, but his behavior did not change. As part of her anticipated promotion to shift supervisor in another store, Kindrai was asked by Jacob to provide updates on Horn's behavior.

Yanissa Rivera worked for Starbucks from April 20, 2019, until May 2023, when she was terminated. Rivera began her employment for Respondent at a store in Hoffman Estates, Illinois, and later worked at the University Avenue store. Rivera worked as a barista and trainer. She trained 3 baristas at University Avenue store and received a bonus for training each one.

Alex Lammers Vantoorenburg (Lammers) was employed by Respondent from 2019 until his discharge in 2023. At the time of his discharge, Lammers worked as a shift supervisor. He generally worked 30 to 35 hours a week on the closing shift.[5]

Megan Jenson was employed by Respondent at the University Avenue Store for about three years as a barista and later as a shift lead. She generally worked 20 hours a week and worked mostly closing shifts.

Kindrai, Lammers, Rivera, and Jenson were all terminated by Respondent. (GC Exhs. 5, 6, 7, 8.) Jenson was terminated for remaining in the store after it closed on March 15 and for giving untruthful information during Respondent's investigation. (GC Exh. 5.) Lammers was terminated for allowing off-duty partners and non-partners to remain in the store after closing and for violating Respondent's Safe Security Standards by opening the safe during the last half-hour of customer operations on March 15. (GC Exh. 6.) Kindrai was terminated for talking to someone who walked up to the drive-through window after the store was closed on March 15 and failing to provide truthful information during Respondent's investigation. (GC Exh. 7.) Rivera was fired for remaining in the store after it closed on March 15 and failing to provide truthful information during Respondent's investigation. (GC Exh. 8.)

All four alleged discriminatees engaged in open union activity of which management was aware. Kindrai distributed union authorization cards and spoke to coworkers about the Union. Lammers spoke to coworkers and Jacob about his support for the Union. Rivera also distributed union authorization cards. Jenson signed a union authorization card and spoke positively of the Union in the Starbeezy group chat.

D. Bulletin Board Incident

In early March 2022,[6] Kindrai saw union information on one of the bulletin boards in the back room of the University Avenue store. (GC Exh. 13.) Other employees first saw the posting in an Instagram group chat for store employees and then later saw the physical document in the back room. The posting contained a QR code that took anyone who scanned it to a forum where they could enter their information to be contacted by a union representative. Several other employees also completed the form. At the time that the Union flyer was posted on the bulletin board, several other items were posted, including a long letter from Respondent about unions.

[5] Jacob shared that Lammers received a documented coaching and a written warning in the past. These documents were subpoenaed but were not produced at the hearing. (GC Exh. 107, Att. B, para. 25.)

[6] All dates are in 2022 unless otherwise indicated.

Several weeks after the March 15 union meeting, Kindrai noticed that all union literature, including the flyer and contact cards, had been removed from the bulletin board. Kindrai believed that the union information was removed by Jacob. However, Jacob testified that she saw Meirick throw the materials in the trash.

E. March 15 Union Meeting

Kindrai used the QR code to contact the Union and a representative contacted Kindrai. She spoke to the representative about what a union could do for the store employees and general information about the Union. A few days later Kindrai again spoke with the union representative and scheduled a meeting in the store on March 15 at 7:00 p.m., near closing time.[7] Kindrai told her coworkers about the meeting in person and through the store's Instagram group chat.

On the Starbeezy group chat, in response to Kindrai's announcement of the union meeting, shift supervisor Brock Meirick indicated that the store manager should be told. (GC Exh. 14.) Meirick called Jacob and they spoke for a few minutes. He told her that the meeting would start at 7:00 p.m. Jacob said that as long as partners were not clocked in and they didn't have the meeting after the store was closed, they could hold a meeting in the store. Meirick did not think the meeting would take place after the store closed but did not mention the meeting lasting past closing in his group chat comments. Both Meirick and Jacob thought the meeting was a good idea so that partners could be informed about the union. Meirick later responded that he called store manager Sarah Jacob and obtained her permission for the meeting. Meirick further indicated that employees could not be on the clock at the time of the meeting. Kindrai assumed that Meirick and Jacob knew that the meeting would run past the store's closing time.[8]

Jacob contacted Kim about the union meeting on March 14. (GC Exh. 40.) They engaged in a text conversation through March 15. At 7:43 p.m. on March 14 Kim texted that she, "have not forgotten about you, I am just waiting for a solid answer before I call you back." If either Jacob or Kim were concerned about safety at the meeting, they did not try to stop it.

Respondent's employees held a meeting with union representatives in the store on March 15. Kindrai did not attend the meeting because she was working in the store and her shift did not end until closing, around 8:30 p.m. Employees Lammers, Hayden Wahl, and Annabelle Bonilla were also scheduled to work that night.[9] Bonilla was done working at 7:00 and the others were scheduled to work until closing time.

Three union representatives attended the meeting, arriving around 7:00 p.m. They sat at a table across from the mobile order pick up station to wait for the meeting to begin. Employees

[7] The store was scheduled to close at 7:30 p.m. on that date, but previously closed at 8:00 p.m.

[8] The group chat does not mention anyone being in the store after it closed. (GC Exh. 14.) Jacob was aware of the March 15 meeting. Kim was also aware of the meeting as she texted Jacob on March 15 at 8:23 p.m. asking for news. (GC Exh. 40.)

[9] Lammers was the shift supervisor on duty that night, while Wahl, Bonilla, and Kindrai were baristas. Bonilla resigned from her employment with Respondent after March 15. March 15 was Wahl's last shift as an employee of Respondent.

Yanissa Rivera, Annabelle Bonilla, and Megan Jenson joined the union representatives at the table for the meeting.[10]

Shortly after the store closed on March 15, Kindrai opened the drive-through window and spoke to someone in a car. The customer was a "regular" and left generous tips. According to Kindrai, store practice was to give late arriving customers their orders without charging them because employees could not ring up orders after the store closed.

The meeting started shortly before 7:00 p.m. The meeting ended shortly after 8:00 p.m., after the store had closed. The non-partners left the store together. Jenson, Rivera, and Bonilla, who were not on duty, remained in the store until the employees on duty closed and locked the store, around 8:20 p.m. Bonilla and Rivera were waiting for a ride home from Kindrai.

Kindrai spoke with Rivera, Bonilla, Lammers, and Wahl after the meeting. Kindrai and the other employees were given union authorization cards that night. Kindrai signed her card later and distributed cards to about 8 to 15 other employees. Kindrai also returned signed cards to the Union.

Kindrai did not have any concerns with non-partners and off-duty employees being in the store after closing time on March 15. She indicated that it had been a general practice in the store. Many employees and non-employees, including partners of employees, would remain in the store after closing time to wait for rides. Kindrai herself waited in the store about once a week when she was off-duty waiting to give an on-duty employee a ride home while the store was closed.

After the meeting ended, working partners completed their closing duties. After everyone had clocked out, the partners who had been working during the meeting were given union authorization cards. The partners briefly discussed the Union inside of the store and then left. There is no evidence of property damage, loss, or cash shortage following the meeting. There is no evidence that Respondent received any complaint as a result of the meeting.

F. Respondent's Actions After the March 15 Union Meeting

At 8:23 p.m. on March 15, district manager Chloe Kim texted store manager Sarah Jacob asking if there was any news. (GC Exh. 40.) Jacob replied, "No…super quiet." Kim called the PCC (Partner Contact Center) regarding the meeting on March 17. (R. Exh. 26.) Kim was not called to testify at the hearing. In its case notes, Respondent indicates that her inquiry was

> DM stated SS Brock let her know that a union rep was at store 08970 last Tuesday at 7pm and they had a meeting
> DM stated this is not a petitioned store
> DM stated that this store closes at 7:30

(R. Exh. 26.) Partner relations consultant Lois Peck connected with Partner Relations Manager Christine Karasek later on March 17. In her note, Peck said that Kim had connected with

[10] Bonilla clocked out before joining the meeting.

Karasek and asked if she could pull video footage to see when partners left the store. (R. Exh. 26.) Karasek told Kim not to take action because of protected and concerted activity. An intake form was submitted for third party activity, but no such form was produced at the hearing.

Peck sent an email to Steve Fox, Respondent's senior manager of partner relations, at 9:00 p.m. on March 17. The email stated

> DM was made aware by a partner regarding a meeting in store 8970 WI with Union rep.
> This is not currently a petition store but intake form was submitted, EA Jim is aware of potential 3rd party activity
>
> DM seeking guidance because she wants to ensure safety and security policies are being met.
> -Potentially a meeting with union rep in store after closing and more people in store than 3
> scheduled to close store.
> -Unsure how many people but P&AP pulled video for DM & RD
>
> Questions:
> -if store is closed, is it acceptable for partners to have meetings in the store after hours and what if there are non partners?
> -You'll see in my notes, sounds like DM has sought consult from various avenues (retail PRM, RD, P&AP, now PR)
> -Is this something we would work with DM to obtain more information or should I be partnering
> with Legal now?
>
> Please tell me for future if this is too much information but in case you were traveling (and not able to review roast easily), I wanted to give you an overview.
>
> Thank you, Steve!

(GC Exh. 112.) Peck was not called to testify.

The investigation of this matter was conducted primarily by Greco and Fox. Fox interviewed the employees involved via Zoom and Greco served as a witness and took notes. Fox testified that he became involved in the matter because Kim called the matter in to PCC and shared details about a meeting that "possibly" occurred in the store. The matter was assigned to Fox, a high-ranking senior manager in Respondent's partner relations department. At the time of this investigation, Fox was also responsible for overseeing investigations arising in union-petitioned stores.[11]

[11] Fox was also involved in an investigation at a store in Memphis, Tennessee, resulting in the discharge of seven employees. This investigation resulted in the filing of charges, a complaint, and a trial before Judge Paul Bogas. The General Counsel has asked that I take administrative notice of Judge Bogas' decision in *Starbucks*, 15-CA-290336, et al. JD-30-23 (May 4, 2023). I grant the General

Peck reviewed the surveillance camera footage from the night of March 15.[12] (R. Exh. 28.) The video shows various employees and the union representatives entering the store. After the store was closed, Kindrai is seen handing a bag of food and a drink to someone in a car. Lammers also spoke to this customer. Lammers opened and closed the safe for the last time at 7:52 p.m., after the store was closed. However, he is also seen earlier opening the safe within 30 minutes of the end of customer operations. The Union representatives left the store after 8:00 p.m. Rivera, Kindrai, Lammers, and Jenson are seen inside the store holding union authorization cards. At 8:17 p.m., the employees left the store as a group. Peck and Fox used screenshots of the video evidence to create a timeline of events.

Respondent presented several photographs with accompanying notes regarding the night of March 15. (R Exh. 6.[13]) The notes start out by describing each partner in the store that night. Lammers is seen starting the cash handling process at 7:21 p.m. The photos and notes show Kindrai talking to someone in the drive-through window from 7:31 p.m. to 7:36 p.m. Lammers is also seen taking cash while the drive-through window is open.

Fox stated that one of the reasons that Lammers was later discharged was because an unidentified person was seen on security footage in the back room on March 15 while Lammers was shift supervisor. Although Fox initially claimed he did not know if this person was a partner or not, he then characterized this person as a partner, and later reversed course and said he was not sure.

Fox participated in the investigation from his office in Las Vegas, Nevada. He has never been to the University Avenue store. He has never met Sarah Jacob. He had no knowledge of store procedures at the University Avenue store. There is no evidence that Fox knew of any discipline or discharges at the University Avenue store prior to his investigation.

Despite being the store manager, Jacob was not involved in the investigation of the events giving rise to this case. Prior to the March 15 Union meeting, Jacob had been involved in all other terminations and discipline at the University Avenue store.

Peck viewed the store video footage and remained in contact with Fox, who contacted Respondent's legal team, and aligned their initial approach. (R. Exh. 26.) On April 22, Peck noted that a legal consult would take place on April 27. Although Kim was on vacation until April 20, Peck did not appear to make this notation about scheduling the meeting until April 22. On May 1, Peck noted that Respondent was planning separation meetings with the four partners on May 6.

Counsel's request, but only consider it as potentially persuasive precedent as the decision is pending before the Board and is not final.

[12] I do not credit Fox's testimony that he reviewed the surveillance footage. In an email to Peck on June 14, he said he wanted to, "connect about the video you reviewed in this store." (GC Exh. 44.)

[13] Although the parties refer to R. Exh. 6, that exhibit was withdrawn and is not in evidence. These same photos and notes appear in GC Exh. 110, which was not offered into evidence.

G. Interview with Kindrai

On April 5, Greco approached Kindrai and asked to speak with her about an incident that happened in the store. Kindrai and Greco went to a table and sat down. Greco started by explaining that there was a situation at the store and she could not go into detail about it. Greco explained that Kindrai was not in trouble but that she had a few questions. After some conversation, Greco asked Kindrai to meet with Fox via Zoom. Fox started by asking Kindrai some general questions about her life. After about 15 minutes, Fox asked her about the people in the store after it closed. Fox told her he was asking about March 15 and Kindrai asked if she could check her phone for more information. While looking at her phone, Kindrai texted the Capybara Appreciation Space group chat, "i think i'm getting fired for organizing the union." (GC Exh. 11.)

Kindrai told Fox that there was a union meeting in the store on March 15 and Fox asked her to tell him more. She said that she did not attend the meeting because she was working. Fox said that he was concerned about employee safety. Fox then changed subjects and began asking Kindrai about an orange-haired person entering the store. Fox said he knew about this person because he was looking at store security footage of the incident. Kindrai asked to see the footage to identify the person several times, but Fox refused.

Fox also asked if Kindrai had permission to hold the meeting in the store and she said that she had obtained permission from Sarah Jacob through Brock Meirick. Kindrai also told Fox that friends and off-duty partners would wait in the store after it closed with permission from shift supervisors. She said that it was unsafe to wait outside the store because of loiterers in the parking lot and outside the store entrance.

Fox went on to state that the store security footage showed her speaking to someone outside the drive-through window shortly after the store closed. He implied that this person presented a threat and he was concerned for partner safety. Kindrai said she would only open the window after closing would be to collect tips, help a coworker, or to speak to a regular she considered safe. Kindrai told Fox that customers were confused about the store's closing time, which had recently changed.

Kindrai also told Fox about her concerns about employee Inigo Horn's racism, homophobia, and transphobia toward others. She told Fox she had already spoken to Jacob and Kim about her concerns. Fox answered that he would look into it.

Fox then again mentioned the drive-through window incident and questioned, "what if they pulled a gun on you and tried to rob you." (Tr. 107-108.) Kindrai asked if she would be in trouble. (Tr. 108.) Fox did not answer the question and told Kindrai he would be in touch if he needed anything more. Following the interview, Kindrai sent a voice memo to the Capybara Appreciation Space group chat. (GC Exh. 11.) Respondent's notes regarding the interview show that Kindrai had difficulty remembering that day. (R. Exh. 42.)

H. Interview with Lammers

Fox and Greco met with Lammers after meeting with Kindrai on April 5. Greco took Lammers of the floor during his shift to a table. Lammers used a laptop and headphones to meet with Fox via Zoom. Lammers' recollection of the events of March 15 was hazy. Fox asked Lammers about the people who were in the store on March 15, including one with orange hair. Fox showed Lammers a picture of this person but Lammers said he did not recognize him.

Fox and Lammers next discussed his duties as a shift supervisor in closing the store. Fox told Lammers that partners were not supposed to open the drive-through window after the store was closed. Fox also told Lammers he was seen walking away from an open safe. When Fox mentioned off-duty partners being in the store after it closed, Lammers said this was normal. Lammers also said he did not remember being trained on the cash-handling policy mentioned by Fox. Greco did not believe that Lammers was honest in his interview.

I. Interview with Jacob

Greco and Fox did not initially plan to interview Jacob but decided to do so because Kindrai had mentioned receiving permission for the March 15 meeting from her. Fox interviewed Jacob on April 5. Jacob denied ever giving permission for partners to stay in the store after hours. Jacob recalled an incident in which she made Kindrai, who was waiting to give an on-duty partner a ride home, leave the store when it closed.[14]

Jacob acknowledged problems with Inigo Horn. She was aware that Horn had misgendered a partner and made a racially insensitive remark. She said that Horn had been coached and received a written warning for these issues.

Jacob said she had never had issues with Lammers' cash handling. She said her team knows that cash handling is "black and white." She did not state anything about Lammers' training in her interview.[15]

J. Exchange of Text Messages

After her interview with Fox, Kindrai sent a series of text and voice messages to the Capybara Appreciation Space group chat. (GC Exh. 11.) Lammers was not included in this group. Jenson posted a series of articles about Starbucks firing people allegedly for engaging in union activity. Participants expressed confusion regarding the orange haired man about which Fox had asked Kindrai. Rivera asked why Respondent decided to go through the camera footage. Jenson replied that Respondent was looking for an excuse to fire people so it looks legal. Rivera said that if they were there past closing time it could be considered trespass. She testified that she used the word "trespass" because she heard about a similar issue arising in a Memphis store.

[14] Kindrai denied this occurred before March 15. Kindrai's partner, Bonilla, also denied this.

[15] Greco testified that Jacob did not contradict Lammers' claim that he was not properly trained on cash handling. In any event, Jacob was not the store manager when Lammers was trained as a shift supervisor.

Rivera and Jenson then posted about excuses they would use when interviewed by Fox and Greco. After hearing about Fox's questioning of Kindrai, Rivera believed that she needed to save herself. Rivera and Jenson then created a laundry list of ways to get themselves out of any potential trouble, including: sympathy; saying someone sketchy was outside; lying; saying that the union people left and texted us that someone weird was outside; and pulling the we're women an he's a man card. Kindrai also said that the "union guys" suggested that they "play dumb and mislead them where we can." Rivera stated, "But we need to come up with a story and stick to it." There is no evidence that the discriminatees agreed upon a scheme to deceive Respondent or that any of their statements at subsequent interviews were in furtherance of any such scheme.

K. Interview with Jenson

On April 6, Fox and Greco interviewed Meg Jenson. Fox introduced himself and asked Jenson about herself. She said that she was a full-time student and part-time employee at the store. Fox then asked her if she remembered the night of March 15. She said that she did not remember and needed Fox to refresh her memory. Fox said that he knew she was in the store after hours with other people. She admitted that she remembered that. Fox asked if she worked that day and she said that she had not. Fox said that he had evidence of multiple people in the store. He did not want to discuss the contents of the meeting. He asked if there were any policy violations and she said she was not aware of any.

Jenson said she did not plan the meeting. When Fox asked who did, she lied and said she did not know in an effort to protect her coworkers. Fox asked Jenson if they had permission for the meeting. She said that Jacob knew they were having a meeting. Fox asked Jenson who was at the meeting. She again lied in response to save other employees' jobs.

During the interview, Jenson told Fox it was common for off-duty partners to remain in the store, mostly because of security concerns. Fox said he did not care about previous incidents, just this one. Respondent's interview notes reflect that Jenson said, "staying afterward is just a thing that has happened for years." The notes also indicate that Jenson said she could not remember who as at the meeting and that she became emotional during the meeting. At the end of the interview, Jenson asked what would happen next. Jenson was told that policy was broken but they needed to interview more partners.

L. Interview with Meirick

Fox and Greco interviewed Brock Meirick on April 7 based on Kindrai's statement that he had informed Jacob of the meeting. Fox asked Meirick about store closing procedures. Meirick said that they were not allowed to let anyone in the store who was not scheduled to work or on the clock after the store closed. Meirick did not recall Fox asking him about any conversations he had with Jacob about the March 15 meeting. Interview notes show that Fox asked Meirick if he had gotten permission for the March 15 after hours meeting. The notes say that Meirick was surprised by this question and responded that he did not know what Fox was talking about.

M. Interview with Rivera

Rivera was interviewed by Fox on April 8. She spoke to Fox for about 20 minutes using a laptop and headphones. Fox told her that there was a safety incident at the store a few weeks earlier that he wanted to discuss with her. Fox asked if she stayed in the store after hours on March 15. She said that she did for a few minutes, but Fox corrected her stating that it was for 47 minutes. Fox asked her who the shift lead was that night and she lied and said that she did not know. Rivera did not want to get Lammers in trouble. Fox questioned her truthfulness.

Fox then asked Rivera if she knew an orange haired man who was in the store that night. Rivera asked to see the video. She said it may have been a union representative or Megan Jenson. Fox would not let her see the video. Fox asked if any of the non-employees stayed in the store past closing time. She replied they had for 5 or 10 minutes and that one of them may have gone to the bathroom. Rivera said that after the non-employees left the employees remained in the store. Fox again questioned her truthfulness.

Fox said he didn't know what was going to happen and asked if Rivera wanted to change her statement. Rivera declined his invitation. Fox then proceeded to ask her about an incident at the drive-through window on March 15, but Rivera said she did not know anything about it.

Rivera offered that other people stayed in the store after hours and that no one questioned it and no one got in trouble. Fox did not respond. Interview notes reflect that Rivera said that she had stayed in the store after hours previously with approval from the shift supervisor.

Rivera candidly admitted that she had not been truthful in her interview with Fox regarding the identity of the shift supervisor and staying in the store after closing time on March 15. However, Rivera did so to protect herself and others.

N. *Respondent's Investigation After the Interviews*

There is no evidence that Respondent ever reviewed security camera footage from other dates or took other investigative steps in an effort to corroborate the claims of the partners in the investigation. All of the partners who testified stated that they had stayed in the store after it closed or had witnessed off-duty partners or others in the store after it closed. Lammers specifically testified that Jacob allowed an off-duty partner to remain in the store after hours while on-duty employees set up a holiday display.

There is also no evidence that Respondent reviewed Lammers' training records to verify his claim that he was not trained on proper safe operations. Others testified that the safe is often opened during the last half hour of operations. A review of security camera footage should have proven or disproven these claims.

There is no evidence that Respondent reviewed sales or order histories from March 15 to see whether Kindrai was fulfilling an order at the drive-through window as seen in the video footage. During the investigation, Respondent never asked Kindrai to provide the text messages about the meeting on March 15. Although Respondent maintains that an after-hours meeting was never approved, Jacob did approve a union meeting in the store on March 15.

No effort was made to train or retrain employees on store policies, including closing policies, safe operations, or cash-handling. All of the discriminatees were allowed to continue working closing shifts, including Lammers and Jenson as shift supervisors, from the time of their interviews until their terminations in June. Lammers and Jenson were allowed to maintain a code for the safe, a password for the security system, and keys to the store. They were also allowed to continue their cash-handling duties.

O. Respondent Decides to Terminate the Alleged Discriminatees

On April 26 a representation petition was filed by the Union for the University Avenue store. (GC Exh. 2.) The Union requested recognition as the bargaining representative for the store's employees on April 25 but received no reply.

On April 27, Fox made his recommendation to terminate Kindrai, Jenson, Lammers, and Rivera. Kim, Fox, Greco, Christine Karasek, Lois Peck, a Partner Resource Director, and a Regional Director participated in the call to discuss the terminations. Greco testified that they waited to have this discussion until after Kim returned from vacation on April 20.[16] Indeed, Fox recommended termination on the call and there are no notes regarding Kim's input.

In offers of proof, Respondent contended that Greco and Kim would testify that no one had knowledge of the discriminatees' union sentiments during the call on April 27. This claim is controverted by the evidence. Fox testified that he was aware of the employees' union sentiments based on his interviews. Greco attended these interviews. Also, the video evidence shows the employees holding and exchanging union authorization cards in the store on March 15.

P. Respondent Terminates the Alleged Discriminatees

On May 6 district managers Greco and Kim terminated the four discriminatees. In the past store manager Jacob was responsible for terminating employees. All of the employees were terminated in the store, except for Lammers.

Greco and Kim approached Kindrai when she arrived at the store and told her to clock in an meet with them. Kindrai was presented a written notice of termination, which stated, "Kendra engaged in unsafe behavior and provided false information when interviewed about an incident on March 15." (GC Exh. 7.) The allegedly false information provided was that she stated that partners stayed in the store because of safety reasons and stated that the store manager provided permission for a meeting to be held after the store closed. Furthermore, she spoke with someone through the drive-through window for an extended period while the window should have been

[16] I do not credit this testimony as it is illogical. Kim played no role in the investigations Fox said that Kim was the ultimate decision maker regarding the terminations. Respondent presented no evidence that Greco or Fox could not terminate the discriminatees. Furthermore, Peck noted on April 20 that a meeting had been set with Fox and legal. Peck's note about the scheduling of the April 27 meeting was made on April 22, after Kim returned from vacation. (R. Exh. 26.)

locked because the store was closed. Kim signed the document as the manager and Greco signed as a witness.

Greco and Kim next turned to Jenson. Jenson was about 30 minutes into working as a shift lead on May 6 when Kim and Greco pulled her aside. They presented Jenson with her termination notice, which stated that she violated company policy on March 15, and was being terminated as a result. (GC Exh. 5.) The document stated that she remained in the store after the close of business. It further stated that she failed to provide truthful information regarding her claim that she was not aware that a non-partner was in the store after it closed, that she was in the store with permission after hours, and regarding her statements about the time partners left the store after it closed. Jenson grabbed her personal belongings and returned her store keys.

Rivera was training an employee at the drive-through for two hours before Kim pulled her aside. Greco and Kim then began discussing her termination. Kim asked if she remembered a safety incident that happened the prior month. She said that she did. Kim told her that she was being terminated. Rivera then signed her termination document and left the store. Rivera's termination document indicated that she was terminated for violating company policy on March 15. (GC Exh. 8.) Specifically, the document stated that Rivera remained in the store after the close of business on March 15, 2022. It also stated that she was untruthful in her statements that she only remained in the store for a few minutes after it closed and that non-partners did not remain in the store after closing.

Greco and Kim terminated Lammers over the phone. Kim stated that he was being terminated for answering the drive-through window after store closing and leaving the safe open. Lammers replied that they opened the drive-through windows for customers after close all the time after closing. He again said that he had not been trained properly. He testified that he never received his termination document. His termination document stated that he was terminated for allowing off-duty partners in the store after the close of business, allowing a non-partner in the store after the close of business, endangering the safety of others, and violating Respondent's Safe Security Standards by opening the safe during the last half hour of customer operations.

Q. Discipline at Another Store

All four discriminatees in this case were terminated without ever having been warned about similar behavior. Respondent provided evidence of other employee discipline for similar infractions. An employee at Store 47058 was terminated on March 26, for entering the store after close of business while off-duty and failing to follow COVID protocols. (R. Exh. 45.) Another employee of Store 47058 was terminated on March 26 for entering the store after the close of business while off-duty, entering behind the counter while off-duty, consuming alcohol on the premises, violating the smoke-free, tobacco-free environment standard, and failing to follow established COVID protocols. (R. Exh. 46.) Another employee was terminated on March 26 for entering the store after the close of business while off-duty, entering behind the counter while off-duty, permitting customers in the store after the close of business, consuming alcohol on the premises, failing to follow established COVID protocols, leaving baristas in the store unsupervised, allowing partners to enter and exit through the back door, permitting partners (including minors) to possess and consume alcohol, and permitting partners to vape on the premises. (R. Exh. 47.) Another employee was terminated on March 26 for entering the store

after the close of business while off-duty, entering behind the counter while off-duty, permitting customers in the store after the close of business, consuming alcohol on the premises, failing to follow established COVID protocols, leaving baristas in the store unsupervised, allowing partners to enter and exit through the back door, permitting partners (including minors) to possess and consume alcohol, and permitting partners to vape on the premises. (R. Exh. 48.) Another employee of Store 47058 was terminated on March 26 for entering the store after the close of business while off-duty, entering behind the counter while off-duty, consuming alcohol on the premises, violating the smoke-free, tobacco-free environment standard, and failing to follow established COVID protocols. (R. Exh. 49.) All of these employees were fired in March 2022, but the incidents all occurred on New Years Eve, December 31, 2021.

R. Employment of Horn

Employee Ingo Horn engaged in seemingly endless series of misdeeds while employed at the University Avenue store. Kindrai, Lammers, and Meirick testified that they reported to Jacob that Horn: asked to touch a Black employee's hair; referred to a Black employee's hair as "greasy and nappy"; asked an employee about her bottom surgery; told an employe undergoing bottom surgery, "You don't have a penis now. That fucking sucks"; yelled to other employees that an employee had "got his dick cut off" with reference to the employee's bottom surgery; refused to follow instructions; misgendered employees; told an 18-year-old employee that she could be a "porn star"; frequently arrived to work late; took phone calls during his shift; came to work out of dress code; told a drive-through customer to "kill themselves" in earshot of customers in the lobby; made homophobic remarks about employees' romantic relationships; and used a cleaning rag to clean his shoe and later used the same rag to clean nozzles and the bar. Even though Respondent has a no-tolerance discrimination policy, Jacob gave Horn four write-ups before she decided to terminate him. Horn quit before he could be terminated. Kindrai testified, without contradiction, that Jacob told her that she had to have three write-ups on a partner before terminating them.[17]

S. Kindrai Seeks Reemployment

Kindrai applied to work at Starbucks' Capitol Square store in Madison at the end of May using an online application terminal. Chris McQuillan is the store manager.

Kindrai interviewed with McQuillan for a position at the store on May 31. McQuillan said he heard about what happened and that he heard she was an excellent employee. He also said she would be an absolutely excellent addition to the team and would hire her on the spot if there weren't another reason. Kindrai thanked him for his kind words and asked what the reason was that he couldn't hire her on the spot. McQuillan replied that he had called Starbucks' Partner Relations hub to inquire about her eligibility for rehire. He told her he was waiting for a call back

[17] Jacob was not asked about this conversation Where a witness was not questioned about potentially damaging statements attributed to him or her by an opposing witness, it is appropriate to draw an adverse inference and find the witness would not have disputed such testimony. *LSF Transportation, Inc*., 330 NLRB 1054, 1063 fn. 11 (2000); *Asarco, Inc*., 316 NLRB 636, 640 fn. 15 (1995), modified on other grounds 86 F.3d 1401 (5th Cir. 1996). Thus, I credit Kindrai's testimony on this point.

from partner relations. He said typically he would get an answer within 30 seconds, but the person on the phone waited a few minutes and then said they would have to get back to him.

During the interview she informed McQuillan of the "full situation." McQuillan informed her that the union would not be an issue at his location because they had already voted to unionize. She told him about her interview with Fox and shared all of Fox's concerns, including people being in the store after hours for the meeting and the drive-through incident. McQuillan said that sounded absurd. McQuillan did not testify at the hearing. Kindrai specifically shared that she was separated for safety and security violations and untruthfulness about the violations.

McQuillan informed Kindrai about a week later that she was ineligible for rehire. McQuillan sent her an email on June 4. (GC Exh. 9, pp. 3-4.) McQuillen said he thought she would make a perfect fit there, but the decision had been taken out of his hands. Prior to receiving the email, Kindrai was unaware she was ineligible for rehire. Lynn Potts, a senior analyst on Respondent's human resources operations team, testified that Kindrai was ineligible for rehire because she had been terminated for a safety and security violation. (R. Exhs. 24, 27.) Respondent's internal case notes indicated that Kindrai was determined ineligible for rehire based on "separation code and notes in case." (R. Exh. 27.) It further noted that she was terminated as one of "multiple partners separated for safety and security violations." Kindrai has not communicated with McQuillan since June 4.

T. Subpoena and Procedural Issues

These proceedings quickly devolved into a metadrama. Prior to the hearing, Respondent sought to revoke the General Counsel's subpoena duces tecum on September 2, 2022. I declined to do so in an order dated October 27, 2022. (GC Exh. 108F.) My order required Respondent to produce the documents and testimony sought by the General Counsel in the subpoena at the beginning of the hearing in this case, scheduled to commence at 9:00 a.m. on November 15, 2022, in the Board's Milwaukee Subregional Office Hearing Room. My order further directed Respondent to prepare a privilege log with sufficient detail to permit an assessment of any claims of privilege and to be prepared to produce any documents it claimed were privileged for an *in camera* inspection at the hearing.

On November 15, 2022, the hearing opened in the Board's Milwaukee Subregional Office. Respondent provided the General Counsel with a link to a password protected Biscom account at 9:01 a.m. on November 15. The file contained a zip file with four separate folders titled, "Data," "Images," "Natives" and "Texts." The "Data" file contains what appears to me metadata. The "Images" file contained 851 separate single page images saved as ".tif" files that one must click on individually to view. Each image contains a Bates number, but the images were not otherwise organized by subpoena paragraph or subparagraph, as directed by the subpoena, or in any other discernable order. Nor were these images in their native format, i.e., in the form or forms in which they were ordinarily maintained, as directed by the subpoena. Numerous images were blacked out pages or identified as privileged. The "Natives" files contained the only two documents thar Respondent provided in their native formats – one [E]xcel spreadsheet . . . and one PowerPoint file . . . Finally, the "Texts" file contains .txt copies of the 851 images contained in the "Images" file.

Subpoena compliance was raised several times during first week of the hearing. The General Counsel argued that she had reason to believe that Respondent had not produced documents relating to Lammers' training or relating to anti-union literature allegedly maintained by Respondent. The General Counsel also noted that store security protocols or manuals were not produced. The General Counsel also asked that Respondent's custodian of records appear and testify regarding what items were produced in response to which subpoena paragraphs. She also asked that Respondent produce a privilege log. For his part, Respondent's counsel noted that the parties had not yet met and conferred regarding the subpoena, but offered to do so, despite compliance being due the previous day. He anticipated finalizing the privilege log within the next 24 hours. I advised Respondent's counsel that I expected every remaining piece of subpoenaed information to be disclosed by the next day or an explanation as to why it could not be produced. I also stated that I expected the custodian of records to be present for questioning the next day. I reminded Respondent's counsel that the duty was on the party who was served with the subpoena to make a good faith effort to find the records. At my direction, the parties met and conferred for about an hour about the subpoena prior to the start of the hearing on November 17, 2022.

Sometime prior to the start of the hearing on November 17, Respondent's counsel provided the General Counsel with an index of the documents he had produced, as well as complete hard copies of certain documents (Partner Guide, Partner Resource Manual, and Store Operations Manual). That day, Respondent's counsel attempted to cross-examine a witness regarding training on Starbucks policies. The General Counsel objected because she had not been provided with the training materials, as sought in the subpoena. The General Counsel further objected to questioning regarding Respondent's decision-making process for discipline as she had not yet received documents regarding that process. At the end of the day on November 17, the General Counsel called Respondent's custodian of records to testify. Respondent's counsel indicated that no custodian was present and that, "there is not a single custodian of records." I directed the parties to be prepared to argue the next morning as to what sanctions, if any, I should impose on Respondent for non-compliance with the subpoena and its failure to produce a custodian to testify.

On the morning of November 18, Respondent's counsel indicated that a custodian of records would not appear. Respondent also failed to produce any assertedly privileged documents for an *in camera* review. The General Counsel moved for sanctions against Respondent for its non-compliance with the subpoena and asked me to draw specific adverse inferences against Respondent. Respondent's counsel made a statement opposing any sanctions. I entered a briefing schedule to allow the parties to more fully state their positions as to whether I should sanction Respondent for its non-compliance. I also adjourned the hearing until January 23, 2023, with the expectation of calling additional witnesses and dealing with any remaining evidentiary issues.

On December 8, 2022, Counsel for the General Counsel filed their motion for evidentiary sanctions and adverse inferences. The General Counsel further argued that Respondent's custodian of records should be ordered to testify and that the documents claimed as privileged should be produced for an *in camera* inspection to determine whether the privilege was properly claimed. Respondent argued that there was no basis to order it to produce privileged documents for an *in camera* inspection. Respondent further contended that its electronic production satisfied its subpoena obligations. Respondent asserted that I lacked the authority to compel compliance

with the subpoena or issue evidentiary sanctions. Respondent maintained that there was no basis to impose adverse inferences. Respondent further claimed that there was no basis on which to order it to produce a witness to testify as to collection efforts.

I ordered that Respondent's custodian of records appear and testify at the hearing as directed by the subpoena. Respondent's counsel indicated on more than one occasion that the custodian of records was not and would not be present. I advised Respondent's counsel that more than one person could appear and testify regarding the records that were produced and the search efforts for those records. Respondent's custodian of records did not appear at any point during the hearing.

I ordered the sanctions and adverse inferences requested by the General Counsel on January 18, 2023, fully setting forth the procedural history of the case and my reasoning. (GC Exh. 108L.) I further requested the Chief Judge Giannasi appoint a special master to decide the issues of privilege raised by Respondent. Judge Andrew Gollin was appointed as a special master on January 19. (GC Exh. 108M.)

On January 27, 2023, Respondent filed a special appeal to the Board. (GC Exh. 108N.) On May 26, 2023, the Board granted Respondent's special appeal and rejected it on the merits, finding that Respondent failed to establish that I abused my discretion. (GC Exh. 108P.)

The special master ordered Respondent to produce a privilege log and related documents by June 14, 2023. (GC Exh. 108Q.) Respondent refused. (GC Exh. 108R.) Subsequently Special Master Gollin filed a report dated June 14, 2023. (GC Exh. 108S.) The special master found that, due to Respondent's stated position, he was unable to consider or resolve the privilege issues related to the General Counsel's Subpoena.

On July 18, 2023, the General Counsel again moved for additional sanctions and adverse inference due to Respondent's failure to cooperate with the special master. (GC Exh. 108T.) Thereafter, I issued and order to show cause as to why I should not grant the General Counsel's motion. (GC Exh. 108U.) After considering the General Counsel's motion and Respondent's opposition to it. (GC Exh. 108V.) I issued an order granting additional sanctions on October 11, 2023. (GC Exh. 108W.) Respondent filed another special appeal with the Board.[18]

The hearing started again on October 16, 2023. At the outset of the hearing the General Counsel indicated that she had issued a subpoena to Sarah Jacob during the first session of the hearing, but she did not appear. In fact, the General Counsel issued two subpoenas to Jacob, one as store manager and one t other personally at her home address. Jacob admitted she had received the subpoena issued for her to testify at the first hearing session. (Tr. 720.) Her last day of employment with Starbucks was September 4, 2022. (Id.) She believed she was employed when she received the first subpoena. She let Chloe Kim know she had received it. (Tr. 721.) She also provided screenshots of her text messages to Respondent's counsel. (Tr. 721.) She provided the text messages after she received the subpoena but before the date it said she had to comply

[18] This time, on December 22, 202, the Board ruled that there was need for interlocutory relief because the hearing had already concluded. The Board further took this action without prejudice and stated that Respondent could raise the same arguments on exceptions.

with the subpoena. (Tr. 721.) Respondent's counsel advised her that she did not need to appear for the hearing. (Tr. 722.) She was told that only the documents were subpoenaed, not her. (Tr. 723.) The initial subpoena required Jacob to appear on September 27, 2022, however the hearing was postponed. (GC Exh. 53.) Later, the General Counsel served another subpoena on Jacob at her apartment on October 24, 2022. This second subpoena required her to appear at the hearing to testify and to bring certain documents with her. (GC Exh. 54.) She was served with this second subpoena after she left employment with Starbucks but before the first hearing session date. Jacob came to Milwaukee for the hearing on November 15 but did not appear at the hearing as directed. (Tr. 725.) Respondent's counsel told her that the hearing had been postponed. (Tr. 725.) She was told that she did not need to appear and they would contact her about a new date. (Tr. 626.) At this time, Jacob was no longer employed by Starbucks. Respondent's counsel nevertheless paid for her hotel room, but she was not paid for mileage. (Tr. 730-731.)

The General Counsel has now asked that I reverse my subpoena-related adverse inferences and sanctions. The General Counsel asserts that these sanctions and adverse inferences are superfluous given Respondent's presentation of its case. The General Counsel argues that the various offers of proof made by Respondent regarding evidence it would have produced if allowed are both irrelevant and unavailing. Based upon the General Counsel's argument, I vacate my prior orders sanctioning and making adverse inferences against Respondent. As a result, I hereby admit Respondent's previously rejected Exhibits 26 and 27 into evidence.[19]

DISCUSSION AND ANALYSIS

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB at 622. Some of my credibility findings are incorporated into the findings of fact set forth above.

I found Kendra Kindrai to be a credible witness. Her testimony was given in an even and direct manner. She testified in great detail about the events giving rise to the complaint in this case, particularly her interaction with Fox. She candidly admitted things that might make her seem less credible, like engaging in a group chat regarding potentially deceiving Respondent. Kindrai's testimony was supported by the evidence. Thus, I found Kindrai to be a credible witness.

I found Yanissa Rivera to be a credible witness. She gave her testimony in a quiet but thorough manner. Her testimony was corroborated by the evidence in this case. Like Kindrai, she

[19] The General Counsel further withdraws her argument on brief that the Board should reverse its decision in *Electrolux Home Products,* 368 NLRB No. 34 (2019).

testified in great detail about her interview with Fox. She also believably testified that she was terrified of losing her job after hearing about Kindrai's interview with Fox and firings in other Starbucks stores. She admitted that she had lied to Fox about some of the details of the March 15 meeting to protect herself and other employees. Thus, I credit Rivera's testimony.

I found Megan Jenson to be a credible witness. She testified in a believable and genuine manner. Jenson's testimony was corroborated by the evidence in the case. Like River, she testified that she had misled Fox during her interview in an effort to save other employees. She also admitted to scheming to lie to Respondent after Kindrai's interview. There is no evidence, however, that this scheme ever came to fruition in the form of a concerted plan. In sort, I found Jenson to be a credible witness.

I found Lammers to be a credible witness. Although he seemed a bit eccentric, Lammers testified in a direct manner. He did not waver on his assertion that he was not properly trained on Respondent's safe and cash-handling procedures. Although his memory was less complete than the other discriminatees, he answered all questions asked of him. He further admitted things like that Jacob supported his right to choose union representation if he wanted it. Lammers' hearing testimony was consistent with him not remembering certain things while being interviewed by Fox. Therefore, I credit Lammers' testimony.

I found Bonilla to be a credible witness. Her testimony had the ring of truth. She admitted attending the March 15 union meeting. Bonilla resigned her employment with Respondent before she could be interviewed and possibly discharged. She did not waver on cross-examination, and her testimony was supported by the evidence in this case. As such, I credit her testimony.

All of the discriminatees and Bonilla candidly testified that no one specifically gave them permission to be in the store after hours on March 15. They also agreed that on March 15 they did not realize they were violating Respondent's policies but did realize they had by the time of the hearing. All admitted that they did not carefully review the Partner Guide after signing an acknowledgement during onboarding.

I specifically credit the testimony of the partners in this case that they often stayed in the store after it closed while off-duty to wait for others and because of safety concerns. Respondent offered free Lyft service to employees at this store because it was in an unsafe area. Also, Kindrai and Jenson mentioned this practice before the texts in the Capybara Appreciation Space group chat in which some of them discussed presenting manufactured reasons for remaining in the store after hours on March 15.

I found Brock Meirick to be a credible witness. Meirick testified in a clear and seemingly honest manner. His brief testimony was given via videoconference from Texas. He testified that he was aware of the union campaign in the store. He further admitted that he was involved the Starbeezy Instagram group chat in which the Union was discussed.[20] His testimony was also supported by the evidence in the case. Therefore, I credit Meiricks's testimony.

[20] The group chat evidence speaks for itself.

I did not find Steve Fox to be a fully credible witness. Much of Fox's testimony was given in response to leading questions and, as such, I afforded it less weight. See generally Fed.R.Evid. 611(c); and *Miller v. Fairchild Industries*, 885 F.2d 498, 514 (9th Cir. 1989), cert. denied 494 U.S. 1056 (1990). His testimony seemed rehearsed. Sometimes he had to be asked a question multiple times before responding. Furthermore, his testimony was contradicted by the evidence in this case. For example, his statement that he was unaware of union activity at the University Avenue store was contradicted by Respondent's internal investigative notes. (R. Exh. 26.) Therefore, I did not credit Fox's testimony unless it was corroborated by another, more credible witness or evidence, was inherently probable, or acted as an admission against interest.

I did not find Lisa Greco to be a fully credible witness. Much of her testimony was given in response to leading questions or was directed by Respondent's counsel and, as such, I afforded it less weight. Regarding conversations she was involved in or witnessed, she did not testify about who said what, instead giving her perception of what was said or in generalities. She also tended to editorialize, such as saying that she felt that Rivera was testifying from a script. Her testimony that she was unaware of union activity at the University Avenue store was contradicted by Respondent's internal investigative notes. Kim's report said that the meeting on March 15 was a union meeting. Thus, I did not credit Greco's testimony unless it was corroborated by another, more credible witness or evidence, was inherently probable, or acted as an admission against interest,

I found Sarah Jacob to be a generally credible witness. She gave her testimony in a convincing manner. She candidly admitted that she knew about the union meeting in the store on March 15 before it happened. She revealed that she saw Meirick remove union items from the bulletin board in the store's back room. She did not waver during her brief cross-examination. As such, I credit Jacob's testimony.[21]

I also found Lynn Potts to be a credible witness. Her brief testimony was given in a forthright manner. Her testimony was completely consistent with the documentary evidence in the case. The General Counsel chose not to cross-examine her. Therefore, I credit Potts' testimony.

Respondent did not call Lois Peck or Chloe Kim in support of its case. An administrative law judge may draw an adverse inference from a party's failure to call a witness who may be reasonably assumed to be favorably disposed to a party and could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent. *Target One, LLC,* 361 NLRB 848, 860 (2014). Kim was the district manager for the University Avenue store and Respondent described her as the ultimate decisionmaker on the discharges of the four discriminatees. Peck was very involved in the investigation of the incident at the University Avenue Store. Both are agents of Respondent. As such, I draw an adverse inference from Respondent's failure to call these witnesses and from the evidence and find that (1) prior to watching the video footage, Peck had no reason to suspect that the union meeting of March 15 went past the University Avenue Store's closing time; (2) Peck's involvement was due to

[21] I did not credit Jacob's testimony regarding an incident in which she forced Kindrai out of the store while she was off-duty when the store closed. This brief bit of testimony was given in a cursory manner. I found Kindrai's testimony on the subject more robust and detailed. As such, I credit Kindrai over Jacob regarding this subject. This does not, however, diminish Jacob's overall credibility.

employee union activity at the University Avenue store; (3) Kim had no basis to believe that the meeting went past closing time; (4) Kim escalated the matter to Partner Relations because it involved employee union activity; and (5) she had never before requested surveillance video footage without evidence of property loss or employee injury.[22]

B. Legal Standards Regarding Discharges

Where an employer defends against an allegation that it has disciplined an employee because of their union activity by asserting that it issued the discipline for legitimate reasons, the Board applies the dual-motive analysis set forth in *Wright Line.*[23] Under this framework, the General Counsel must first make an initial showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision.[24] The elements required to sustain the General Counsel's initial burden are a showing of (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) animus against union or other protected activity on the part of the employer. Id. Once the General Counsel has established that the employee's protected conduct was a motivating factor in the employer's decision, the burden of persuasion shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. Id. If the employer fails to meet its burden, the Board will conclude that a causal relationship exists between the protected activity and the adverse action, and a violation will be found. Motivation is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole. Id. Once an unlawful motive has been established, the employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it has the burden of persuasion to establish that it would have taken the same action even in the absence of the protected conduct. Id. The Board has explained that "the relative contribution of an employer's lawful and unlawful motives for the action against the employee is not decisive.[25]

C. Respondent Violated the Act by Discharging the Discriminatees

The General Counsel easily met her burden of establishing that all four discriminatees engaged in union activity and that Respondent was aware of this activity. Video surveillance footage showed Rivera, Kindrai, and Jenson handling and exchanging union authorization cards just after the meeting. All three admitted their union sentiments in their interviews with Fox. Lammers was also open about his union sentiments with Jacob and signed an authorization card.

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[22] Bryan Romanowich and Jay Jenson each gave brief testimony at the hearing. It was not relevant to these proceedings and was not relied upon in reaching this decision.

[23] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982).

[24] See e.g., *Intertape Polymer Corp.,* 372 NLRB No. 133, slip op. at 6 (2023), enfd. 2024 WL 2764160 (6th Cir. 2024.)

[25] Id., slip op. At 6 fn.24 ("'[W]here, after all the evidence has been submitted, the employer has been unable to carry its burden, [the Board] will not seek to quantitatively analyze the effect of the unlawful cause once it has been found. It is enough that the employees' protected activities are causally related to the employer action which is the basis of the complaint. Whether that 'cause' was the straw that broke the camel's back or a bullet between the eyes, if it were enough to determine events, it is enough to come within the proscription of the Act.'") (quoting *Wright Line,* above, 251 NLRB at 1089 fn. 14): see also e.g., *Igramo Enterprise, Inc.,* 351 NLRB 1337, 1341 & fn. 18 (2007), enfd. 310 Fed. Appx. 452 (2d Cir. 2009).

When Kim escalated the matter to Partner Relations on March 17, she said that she knew that knew that the March 15 meeting was a union meeting.

Greco and Kim's knowledge of union activity is imputed to Respondent. Section 2(13) of the Act makes it clear that an employer is bound by the acts and statements of its supervisors whether specifically authorized or not. *Dorothy Shamrock Coal Co*., 279 NLRB 1298, 1299 (1986). It is well established that the Board imputes a manager's or supervisor's knowledge of an employee's protected concerted activities to the decisionmaker, unless the employer affirmatively establishes a basis for negating such imputation. *G4S Solutions (USA), Inc*., 364 NLRB No. 92 slip op. at 4 (2016), citing *Vision of Elk River, Inc*., 359 NLRB 69, 72 (2012), reaffirmed and incorporated by reference in 361 NLRB 1395 (2014). Therefore, I find that all four discriminatees engaged in union activity and Respondent was aware of this activity.

The General Counsel also established that Respondent harbored animus toward its employees union activity. Unlawful motivation can be inferred from direct or circumstantial evidence. *Intertape Polymer Corp.,* 372 NLRB No. 133, slip op. at 6-7 (2023). The Board may infer animus and a causal connection from factors such as the timing of the action in relation to the union activity, contemporaneous unfair labor practices, shifting, false, or exaggerated reasons given for the action, failure to conduct a meaningful investigation, departure from past practice, and disparate treatment of the employee. Id. Furthermore, the Board has held that the even when the employer's rationale is not patently contrived, the weakness of an employer's reasons for adverse personnel action can be a factor raising a suspicion of unlawful motivation. *General Films, Inc*., 307 NLRB 465, 468 (1992).

Respondent's actions satisfy these factors. First, Respondent's investigation into the events of March 15 seemed targeted in such way as to establish that the four discriminatees were guilty of egregious conduct. There is no evidence that any unsafe behavior occurred during the meeting. Respondent's rule about people being in the store after closing time is not absolute, as an exception is made for vendors. Furthermore, all partner witnesses credibly testified that they and other off-duty partners were allowed to remain in the store after it closed while waiting to receive or give rides. Respondent's own investigative notes demonstrate that Meirick, Jacob, and Kim all knew that the meeting was to begin during store hours, but shortly before closing. No one communicated to the employees that they needed to leave the store by closing time, only that they needed to be off the clock for the meeting. Additionally, at the time Kim requested surveillance footage, she seemed to be searching for a problem to hang on the employees' necks like an albatross. In fact, she only reported the issue because of union activity.

The cursory nature of Respondent's investigation is evidence because, despite findings of "safety concerns", Respondent did not take any action to retrain employees or to remove those acting unsafely from their positions for over a month. Furthermore, Fox made no effort to ascertain who the unknown person in the back room was on March 15. Even though off-duty employees or non-employees being behind the counter or in the back room is listed among Respondent's list of serious violations, Respondent made no effort to investigate this problem any further. Respondent also took no action to confirm employee reports of a past practice of employees remaining in the store after closing time.

Respondent also took no action to investigate Lammers' claim that he was not properly trained on safe and cash-handling procedures. Video surveillance was not obtained to see if Lammers' report that the safe was frequently opened during the last half hour of customer hours was true. In fact, Fox called this irrelevant. A one-sided investigation into employee misconduct supplies evidence that the disciplinary action was triggered by unlawful motive. *NLRB v. Esco Elevators, Inc*., 736 F.2d 295, 299 n. 5 (5th Cir. 1984).

Respondent's contemporaneous unlawful employee interrogations also support a finding of animus. The Board has found that unlawful interrogations provide evidence of animus. *Atelier Condominium*, 361 NLRB No 111, slip op. at 5 (2014), *and R.J. Corman Railroad Construction*, 349 NLRB 987, 989 (2007). Respondent's probing into employee union sentiment violates the Act and bolsters my finding of animus.

Moreover, Respondent's shifting and exaggerated reasons for taking action against the discriminatees provide yet more evidence of pretext and animus. The employees were in no danger at the March 15 meeting. The meeting ended without incident less than an hour after the store closed. No on-duty employees participated in the meeting. By way of example, Kindrai opened the drive-through window only one minute after the store closed to deliver an order to a regular customer. Additionally, Fox testified that Lammers was discharged, in part, because of the unidentified person in the back office. This is not given as a reason for the discharge in Respondent's investigative notes or in Lammers' discharge document.

Respondent's delayed response to the supposed safety and security concerns also support a finding of unlawful motive. Respondent characterized the violations committed by the discriminatees as serious. Nevertheless, all four remained employed in the store from March 15 until their discharges on May 6, a period of almost two months. Lammers and Jenson retained keys to the store and were allowed to handle case during this period. I find this timing suspect and find that this points to an unlawful motive on behalf of Respondent.

Respondent's disparate treatment of the four discriminatees provides further support for a finding that Respondent bore animus to employees' union activities. Employee Ingo Horn was not discharged despite making troubling statements about other employees and poor work habits. Jacob told Kindrai that an employee needed three write-ups before discharge. Fox, Greco, and Kim were all made aware of Horn's issues. Horn was not discharged after four write-ups because he quit first.

In addition, Respondent took no action to identify the unknown person in the back room of the store on March 15. A partner or non-employee being in the back room is also considered a serious violation of Respondent's policies. However, Respondent did not investigation this matter any further while it continued to delve into the actions of the four discriminatees.

Furthermore, the termination notices for employees from another store do not establish that it treated the discriminatees fairly. Those employees were terminated for an apparently raucous New Years Eve party in the store in which criminal behavior, including providing liquor and tobacco to minors, occurred. Respondent's investigation on that incident took almost three months. However, the behavior there was even more serious. Partners were allowed to enter the store through the back door, consume alcohol I the store, vape and use tobacco in the store – all

listed as serious violations of Respondent's policies. Therefore, I do not find that Respondent provided evidence of similar treatment for other employees as the situations are not similar.

Thus, I find that the General Counsel has met her burden under *Wright Line* and the burden now shifts to Respondent to establish that it would have fired the four discriminatees absent their union activity. I have found that Respondent's investigation was tainted by union animus and, therefore, it cannot meet its burden. Where an employer's explanation is pretextual, that determination constitutes a finding that the reasons advanced by the employer either did not exist or were not in fact relied upon. *Limestone Apparel Corp*., 255 NLRB 722, 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). The Board will not find that an employer has met its *Wright Line* burden when its proffered reason for taking adverse action was discovered through a tainted investigation. *Kidde, Inc.,* 294 NLRB 840 (1989). I have found that Respondent's investigation was tainted and pretextual. Nevertheless, I further find that Respondent could not meet its burden under *Wright Line.*

As the Board has repeatedly held, once the General Counsel meets its burden of showing the employer's action was motivated at least in part by unlawful motives, the employer cannot meet its responsive burden by proving the existence of a lawful basis upon which it could have taken the action, but rather is required to show by a preponderance of the evidence that it would have taken the action on that lawful basis even absent its unlawful motivation. *Challenge Mfg. Co*., 368 NLRB No. 35, slip op. at 12 (2019), enfd. 815 Fed. Appx. 22 (6th Cir. 2020).

Respondent cannot rely on the untruthfulness of Jenson and Rivera in its investigation as a basis for meeting its *Wright Line* burden. In *Supershutttle of Orange County, Inc.,* 339 NLRB 1, 3 (2003), the Board held that an employer cannot rely on misconduct elicited by a sham investigation to discharge an employee. *Supershuttle* involved the discharge of an employee for dishonesty in a targeted investigation, similar to the instant case. However, the Board stated that an employer should not be permitted to take advantage of their unlawful conduct that in other circumstances might warrant discipline. Id at 3. This logic applies in this case as the untruthful responses were elicited by Fox during unlawful interrogations.

Furthermore, Respondent was not able to produce evidence that it discharged similarly situated employees anywhere in Wisconsin for similar reasons. Other evidence from Respondent concerning other discipline is unavailing.

In sum, Respondent cannot meet its burden under *Wright Line* because its investigation was tainted *ab initio* by antiunion animus and unlawful motive. I have found pretext in Respondent's investigation due to its cursory nature, frequent mentions of union activity, shifting and exaggerated reasons given for the discharges, departure from past practice, and disparate treatment. Respondent has not established that it would have fired the four discriminatees in the absence of the union activity. As such it violated Section 8(a)(3) and (1) of the Act in firing the Jenson, Kindrai, Lammers, and Rivera.

D. Respondent Violated the Act by Interrogating Employees

Fox interviewed all four discriminatees about alleged policy violations. This questioning quickly turned to questions that would tend to reveal employees' union sympathies. Fox asked

Kindrai to tell him more about the union meeting. He asked Lammers if he had anything to do with the union. He asked Jenson who planned the meeting. He asked Jenson for names of people at the meeting and Lammers and Kindrai who was in the store for the meeting. He asked Rivera what she recalled about March 15. When she said she didn't remember, Fox pressed her saying he had video proof that she was in the store that night.

The lead Board case regarding the legality of interrogations is *Rossmore House*, 269 NLRB 1176 (1984), affd. 760 F.2d 1006 (9th Cir. 1985). Under the *Rossmore House* test, the Board considers the following factors: (1) the history of employer hostility; (2) the nature of the information sought; (3) the supervisor's position in the company hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the reply. 269 NLRB 1176, 1176-1177 (1984), enfd sub nom., *Hotel Employees Local 11 v. NLRV,* 760 F.2d 1006 (9th Cir. 1985). The core issue is whether the questioning would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their statutory rights. This is an objective standard. *Multi-Aid Service*, 331 NLRB 1126 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

In this case, I find that the *Rossmore House* test is satisfied. Fox questioned employees at length about who organized and who was involved in the union meeting. Fox was aware that union activity was occurring at the University Avenue store at the time of his employee interviews. Fox is a very senior manager of Respondent. Greco was also a high-level manager over that store. The two managers met with each employee. Employees were summoned to the meetings, often by surprise, from the work floor. Some employees admitted to lying to protect themselves and others. As such, I find that Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union activities applying the *Rossmore House* factors.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. United Food and Commercial Workers, Local 1473, is a labor organization within the meaning of Section 2(5) of the Act.

3. Beginning on about April 5, 2022, the Respondent violated of Section 8(a)(1) of the Act when it interrogated employees about their union activities and the union activities of other employees.

4. On about May 6, 2022, the Respondent violated Section 8(a)(3) and (1) of the Act when it terminated employees Megan Jenson, Kenra Kindrai, Alex Lammers, and Yanissa Rivera.

5. On or about May 3, 2022, the Respondent violated Section 8(a)(3) and (1) of the Act by listing Kendra Kindrai as ineligible for rehire, causing her to be ineligible for employment at any of the Respondent's stores, including the Capitol Square store.

6. Since on or about May 3, 2022, the Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to offer Kindrai employment or a transfer to the Capitol Square store.

7. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, the Respondent must make Jenson, Kindrai, Lammers, and Rivera (the discriminatees) whole for any loss of earnings and other benefits incurred as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Thryv, Inc*., 372 NLRB No. 22 (2022), the Respondent shall also compensate the discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of its unlawful conduct, including reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceed the individual's interim earnings. See also *King Soopers, Inc*., 364 NLRB 1153 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017). Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Additionally the Respondent shall compensate the discriminatees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, in accordance with *Tortillas Don Chavas*, 361 NLRB 101 (2014), and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year for each affected employee in accordance with *AdvoServ of New Jersey, Inc*., 363 NLRB 1324 (2016). The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. In addition, pursuant to *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021), the Respondent will file with the Regional Director for Region 18 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

Specifically, having found that Respondent violated Section 8(a)(3) and (1) by discharging employees Jenson, Kindrai, Lammers, and Rivera, Respondent must remove any record of the discharges from their records, as applicable, and Respondent shall notify them in writing that this has been done and that the discharges will not be used against them in any way.

Based upon Respondent's repeated and egregious violations of the Act, I shall order a broad cease and desist order in order to deter Respondent from further engaging in behaviors meant to unlawfully thwart unionization efforts among its employees nationwide. In this case, Respondent successfully ended a union campaign at its University Avenue store. The Board issues broad cease and desist orders when a respondent is shown to have a proclivity to violate the Act or has engaged in egregious or widespread misconduct which demonstrates a general disregard for the employees' fundamental statutory rights. *Noah's Ark,* 372 NLRB No. 80, slip op. at 4 (2023),

citing *Hickmott Foods,* 242 NLRB 1357, 1357 (1979). Respondent has engaged in a scorched earth campaign and pattern of misconduct in response to union organizing at its stores across the United States. I take notice that despite several Board orders and dozens of ALJ decisions, Respondent's behavior continues unabated. Thus, I find that a broad cease and desist order is warranted in this case.

I also find a notice reading appropriate in this case. The Board orders a reading of the notice to employees in cases involving egregious and pervasive unfair labor practices in order to mitigate past unlawful conduct and prevent further unlawful conduct. *David Saxe Productions,* 370 NLRB No. 103, slip op. at 6 (2021). A notice reading is also warranted because Respondent's unlawful conduct was undertaken in response to employee organizing. See e.g., *Noah's Ark Processors,* supra (notice reading remedy appropriate where conduct has been sufficiently serious and widespread); *Johnston Fire Servs., LLC,* 371 NLRB No. 56. Slip op. at 6 (2022)(remedies highlighting employee rights, such as a notice reading, constitute an effective, but moderate way to let in a warming wind of information and, more importantly, reassurance in cases where unfair labor practices affected the entire unit and were endorsed by senior management). The unfair labor practices in this case were undertaken by the highest-level managers at the University Avenue store, but also by senior level managers at Respondent's corporate headquarters. Therefore, I find that a notice reading is appropriate in this case.

Finally, the General Counsel seeks an order requiring that Respondent write letters of apology to the discriminatees. (GC Br. 85-86.) Although intriguing, I have not found any binding authority to support such a remedy; therefore, I decline to recommend it here. See *Maverick Fulfillment, LLC,* 373 NLRB No. 57, slip op. at 2 fn. 3 (2024) (declining to order special remedies, including letter of apology, because the General Counsel had not shown that these additional measures are needed to remedy the effects of the Respondent's unfair labor practices) (citing *Tweedleaf*, 372 NLRB No. 96, slip op. at 3 fn. 2 (2023); *Environmental Contractors, Inc*., 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *Checkers*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016) (not reported in bound volume)).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

The Respondent, Starbucks Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) interrogating employees about their union or protected concerted activities.

(b) discharging or otherwise taking adverse action against employees because they engaged in union or protected concerted activity.

[26] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) classifying an employee as in eligible for rehire because he or she engaged in union or protected concerted activity.

(d) refusing to rehire any employee because he or she engaged in union or protected concerted activity

(e) in any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this Order, offer Megan Jenson, Alex Lammers, and Yanissa Rivera reinstatement to their former positions at the Respondent's University Avenue store (located at 3515 University Avenue in Madison, Wisconsin) or, if their positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of wages and benefits they may have suffered because of their unlawful firings.

(b) Within 14 days of the date of this Order, offer reinstatement to discriminatee Kendra Kindrai, at her option, to (1) her former position at the University Avenue store, or if that job no longer exists to a substantially equivalent position, without prejudice to their seniority or other rights and privileges previously enjoyed; or (2) the job she applied for at the Capitol Square store (located at 1 East Main Street in Madison, Wisconsin), or if that job no longer exists, to a substantially equivalent position, and giver her seniority and other benefits from the date she would have been hired at that store had she not been unlawfully terminated.

(c) Make whole discriminatees Kendra Kindrai, Megan Jenson, Yanissa Rivera, and Alex Lammers for any loss of earnings and other benefits incurred as a result of discrimination against them, as set forth in the remedy section of this decision, including by reimbursing them for consequential harm or expenses they incurred because of their unlawful firings.

(d) Within 14 days from the date of this Order, expunge from its files all references to the unlawful firings of Kendra Kindrai, Megan Jenson, Yanissa Rivera, and Alex Lammers, and the unlawful refusal to rehire Kendra Kindrai, and notify them in writing that this has been done and that these unlawful actions will not be used against them in any way.

(e) Compensate Kendra Kindrai, Megan Jenson, Yanissa Rivera, and Alex Lammers for the adverse tax consequences, if any, of receiving a lump-sum backpay award and file with the Regional Director for Region 18, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar quarters.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region post at its University Avenue store and Capitol Square store copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 18 of the National Labor Relations Board, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notice shall be distributed electronically, such as by text, social media, internal smartphone app, email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the stores involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its University Avenue or Capitol Square stores since March 15, 2022.

(h) Hold a meeting or meetings during worktime at the University Avenue and Capitol Square stores, scheduled to ensure the widest possible attendance of employees, at which the Notice will be read to employees by a District Manager from the stores' district in the presence of a Board Agent and by an agent of the Union if the Union so desires, or, at the Respondent's option, by a Board Agent in the presence of the District Manager and, if the Union so desires, the presence of the Union.

(i) Within 21 days after service by the Region, file with the Director for Region 18 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 22, 2025

Melissa M. Olivero
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT ask you about employee support for a union or employees' union activities.

WE WILL NOT fire you because of your union membership or support.

WE WILL NOT list your status as "ineligible for rehire" because of your union membership or support.

WE WILL NOT refuse to hire job applicants or refuse to consider for hire job applicants because of their union membership or support.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL offer Megan Jenson, Alex Lammers, and Yanissa Rivera immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL offer Kendra Kindrai the choice of: (1) immediate and full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed; or (2) the job she applied for, or a similar job, and give her seniority and other benefits from the date she would have been hired or transferred.

WE WILL remove from our files all references to our discharges of Megan Jenson, Kendra Kindrai, Alex Lammers, and Yanissa Rivera, and WE WILL SEND each of them letters stating that this has been done and that our action in discharging them will not be used against them in any way.

WE WILL remove from our files all references to the failure to hire Kendra Kindrai and her ineligibility for rehire, and WE WILL SEND each of her a letter stating that this has been done and that the failure to hire her will not be used against her in any way.

WE WILL pay Megan Jenson, Kendra Kindrai, Alex Lammers, and Yanissa Rivera for the wages and other benefits they lost because we fired them.

WE WILL pay Kendra Kindrai for the wages and other benefits she lost because we failed to hire her.

STARBUCKS CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Region 18 – Subregion 30
310 West Wisconsin Ave., Suite 450W
Milwaukee, Wisconsin 53203-2246
(414) 297-3861
Hours: 8:00 a.m. to 4:30 p.m. (Central)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18-CA-295458 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (414) 930-7203.